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Review of the efficiency of the administrative and financing functioning of the United Nations

Programme budget for the biennium 2008-2009

Report on the activities of the Office of Internal Oversight Services

Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations

Strengthening investigations

Thirty-sixth report of the Advisory Committee on Administrative and Budgetary Questions on the programme budget for the biennium 2008-2009

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on strengthening investigations (A/62/582 and Corr.1). During its consideration of the report, the Advisory Committee met with the Secretary-General's Chef de cabinet and the Under-Secretary-General for Internal Oversight Services, as well as other representatives of the Secretary-General, who provided additional information and clarification.

2. The Advisory Committee notes that the Secretary-General's report is submitted pursuant to General Assembly resolutions 61/275, section II, paragraph 1, and 61/279, paragraph 44, in which the Assembly requested him to report, in the context of the programme budget for the biennium 2008-2009, on the functions, structure and work processes of the Investigations Division with a view to strengthening the investigation function and to provide a comprehensive report to the Assembly at its sixty-second session on the results of the ongoing examination and rationalization of the investigation caseload and the overall review of the capacity of the Investigations Division of the Office of Internal Oversight Services (OIOS).

3. In paragraph 6 of his report (A/62/582), the Secretary-General indicates concern at the "insufficient" capacity of other entities of the Organization mandated to carry out investigations, the need for such capacity to be developed, adequately supported by training and governed by detailed sets of standards and guidelines

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informing all parties concerned of their rights and obligations during investigations, as well as taking into account the due-process rights that ought to be applied uniformly in all investigations carried out by the Organization. In consequence, the Secretary-General seeks a mandate to submit to the Assembly at its sixty-third session a report on the outcome of a comprehensive review of investigations in the United Nations. He states in paragraph 9 that in doing so, he will be guided by recent experience, including investigations of the oil-for-food programme, the Procurement Task Force and practices of other international organizations, taking into account the reform of the system of administration of justice, the OIOS report on strengthening investigations and upcoming reports on the accountability framework, results-based budgeting, enterprise risk management and internal control framework.

4. **The Advisory Committee regrets the lack of information on the entities other than the OIOS that carry out investigations and on the number of cases handled.** Upon enquiry, the Committee was provided with information in this regard, which is set out in annex II below. As stated therein, OIOS generally investigates category I cases on its own initiative or on the request of a head of office, but may refer some of those cases to other entities for action. Category II cases are normally not investigated by OIOS, but by a head of office, the Department of Safety and Security or the Office of Human Resources Management, either on their own initiative or on referral from OIOS.

5. **The Advisory Committee is concerned that the Secretary-General's comments do not build on the framework for investigations adopted in General Assembly resolutions 57/282, section IV, and 59/287.** Furthermore, with respect to training, the Committee points out that, in the context of the revised estimates following the 2005 World Summit, general temporary assistance equivalent to six positions (3 P-4, 2 P-3, 1 General Service (Other level)) was requested to establish a training capacity for the Investigations Division to enable programme managers to handle category II cases of misconduct. Upon enquiry, the Committee was informed that, to date, only two positions have been utilized. The training officers are currently engaged in OIOS in developing a comprehensive "investigation learning programme" designed to enhance the capacity of United Nations staff to support the investigation process, whether by undertaking investigations for category II misconduct or discharging management functions more generally. The programme covers basic skills, as well as policy and normative aspects of investigations. The full training programme will be implemented once it has been finalized. In addition, a special training programme is being developed for investigating allegations of sexual harassment, for which OIOS is working with the Office of Human Resources Management. Other initiatives include workshops, which will be generally available to interested staff, intended to raise awareness of risks in such areas as procurement.

6. **The Advisory Committee recalls that the General Assembly, in its resolution 48/218 B, clearly established the role and mandate of OIOS, and in its resolution 59/287 its role in internal investigations. The Committee also recalls that the placement of the investigation function within OIOS was reaffirmed by the Assembly in its resolution 61/245. Before a decision is taken on the need for a comprehensive review of investigations in the United Nations, as proposed by the Secretary-General, the Committee recommends that he be requested to provide information on all the entities other than OIOS carrying out inquiries and investigations, their legislative basis and precise role, the**

number and types of cases handled, related resources, reporting mechanisms, standards and guidelines involved and training imparted, as well as information on the implementation of resolution 59/287.

7. The Advisory Committee notes that an external review of the Investigations Division was conducted between 15 March and 15 June 2007 and that the resulting report was submitted to the Under-Secretary-General for Internal Oversight Services on 26 June 2007. An account of the actions and proposals of the Under-Secretary-General to strengthen the investigation function of OIOS is included in the annex to the Secretary-General's report (A/62/582 and Corr.1). The Committee notes that these are based on the conclusions and recommendations made by the external expert, as referred to in the annex to that report, paragraphs 4 and 5, and a brief summary of the expert's review can be found in paragraphs 6 to 14. The Committee notes that OIOS has decided to pay particular attention to strengthening the Investigations Division in the following three main areas:

(a) Effective leadership and management;

(b) Operating strategies and procedures;

(c) Optimal structure and location.

8. In his report, the Secretary-General states that he has taken note of the approach taken by OIOS to improve the functioning of the Investigations Division and of the actions, practical in nature and in several instances already under implementation, that are within the authority of the Under-Secretary-General to implement. He also states that he looks forward to seeing the results and recognizes that some of these actions, particularly those related to restructuring, have financial implications, which will be reported to the General Assembly for approval in the appropriate budget cycle (A/62/582, paras. 3 and 5). **In the view of the Advisory Committee, the envisaged restructuring of the Investigations Division is not solely within the managerial purview of the Under-Secretary-General for Internal Oversight Services (see paras. 16 and 23 below).**

9. As regards the strengthening of the leadership and management of the Division (see A/62/582, annex, paras. 18-21), the Advisory Committee was informed that the post of the Deputy Director had been filled in December 2007 and notes that its incumbent is tasked with, among other functions, the implementation of the strengthening initiatives. The Committee was also informed that the recruitment of the Director of the Division was under way. **Further information regarding progress in the recruitment should be provided to the General Assembly at the time of its consideration of the Secretary-General's report.**

10. The Advisory Committee notes that the initiatives undertaken in connection with operational strategies and procedures are described in paragraphs 22 to 38 of the OIOS report annexed to the report of the Secretary-General. These include the current ongoing review and update of the investigations manual and the prioritization of cases and related establishment of a case intake committee, comprising the Director and two Deputy Directors of the Division, to facilitate informed decisions on case intake, oversight of the progress of ongoing case investigations and changes in priorities and direction as deemed appropriate. The Committee was also informed by OIOS that the development of standard operating procedures, initiated in 2006 in order to provide a more comprehensive framework and facilitate continuous improvement, had been completed. In particular, according

to OIOS, procedures dealing with witness/subject interviews have been prepared to reflect recent trends in the administration of justice, and investigation report procedures have been updated to support the disciplinary process better. In addition, the Committee was informed that OIOS is incorporating forensic methods, tools and practices to improve its capacity to detect fraud and will initiate the replacement of the case management system in order to provide users with a secure and accessible tool. **The Committee is of the opinion that the implementation of these initiatives should be used as benchmarks for future evaluation of the work of the Investigations Division.**

11. As to structuring the Investigations Division, the Advisory Committee notes that the proposals are centred on the following: (a) organizing investigative capacity around the two main types of cases investigated by OIOS (sexual exploitation and abuse cases and financial, economic and administrative cases); (b) the decision to create specialized teams to investigate these cases effectively; and (c) repositioning the resident investigators from peacekeeping missions into three regional centres (New York, Vienna and Nairobi) where investigative capacity will be concentrated.

12. The Advisory Committee also notes that these proposals would not change the categorization of cases, as established by General Assembly resolution 59/287 following consideration of the related OIOS report (see A/58/708), or the scope or extent of the investigations that OIOS is mandated to undertake (see A/62/582, annex, para. 42). The Committee further notes the argument of OIOS that, by placing investigators with requisite skills and expertise in specialized teams or units, the quality and speed of investigations will improve, allowing greater focus and development of expertise in particular types of investigation.

13. As to concentrating investigative capacity in the regional centres, OIOS argues that this provides, in addition to a larger pool offering more options for ensuring that specific skills required are readily accessible, a way to maximize time and expertise, make training and support more cost-effective and draw on experience gained from having resident investigators in peacekeeping missions in the past two years, as well as that related to the Procurement Task Force (A/62/582, annex, paras. 48-51). With regard to the placement of resident investigators in peacekeeping missions, the Advisory Committee was informed of difficulties in attracting and retaining qualified and experienced staff, due to mission conditions and the fact that the job, by its very nature, tends to isolate investigators from other mission staff. Other factors include longer investigation times due to disruptions, such as rules regarding occasional recuperation break; the fact that analysis, research and report preparation do not necessarily have to be performed in situ; higher costs related to ongoing training of dispersed staff; lack of cohesion and consistency in the work products; and the difficulties involved in global case management. The Committee was also informed by OIOS that experience regarding the Procurement Task Force had shown that highly qualified staff and specialized teams were able to carry out complicated investigations after a couple of field visits of a few weeks each.

14. According to OIOS, while there are cost implications related to moving staff to the regional centres, there may also be cost savings, as fewer posts may be required to cover investigation requirements (A/62/582, annex, para. 55). Information on the current staffing of the Investigations Division is presented in annex I below.

15. The Advisory Committee notes that information on the expert's review, including the experience of the expert, the terms of reference of the review, the

work involved and a brief summary of the recommendations is provided in A/62/582, annex, paragraphs 6-14. The Committee also notes that the actions proposed by the Under-Secretary-General to strengthen the Investigations Division are based on the recommendations of the review (see para. 7 above). However, the Committee did not have the benefit of access to the review itself, as OIOS declined to provide it.

16. The Advisory Committee also recalls that, in making its decision on the current arrangements for conducting investigations, the General Assembly was guided by the recommendations contained in the report of the Secretary-General (A/57/494) and that of OIOS (see A/59/546), which drew attention to the benefits of a combination of resident and regional investigative capacity. **The Committee considers that the presentation on the envisaged restructuring would have been strengthened by a more complete analysis and specific reference to the experience with resident investigators. The submission of the proposals to the Assembly should therefore be accompanied by such analysis.**

17. According to OIOS, the quality and success of the Procurement Task Force investigations underscore the advantages of specialist professional investigators and provide further justification for the restructuring of the Division into specialized units, as well as the recruitment of investigators with specialist skills (A/62/582, annex, paras. 66 and 68). In addition, in paragraph 86 of the same report it is stated that the implementation of the restructuring of the Investigations Division will be approached with care and full consideration of the impact that the team/unit concept and the relocation of investigators from peacekeeping missions will have on staff. **The Advisory Committee is of the opinion that the question of the impact on staff of the team/unit concept and the relocation of the investigators would benefit from being addressed in advance and not at the time of implementation.**

18. In addition, the Advisory Committee recalls that, in paragraph 4 of its resolution 62/234, the General Assembly decided to conduct an overall review of the capacity of the Investigations Division by 30 June 2008, addressing, inter alia, the activities of the Procurement Task Force. In paragraphs 6 and 7 of the same resolution, the Assembly decided to revert to the consideration of the report of OIOS on the activities of the Procurement Task Force (A/62/272), the related note by the Secretary-General (A/62/272/Add.1) and the report on the overall review of the capacity of the Investigations Division (A/62/582 and Corr.1) at the first part of its resumed sixty-second session. **The Committee points out, therefore, that the Procurement Task Force will be reviewed by the General Assembly.**

19. Pursuant to the request in paragraph 5 of General Assembly resolution 62/234, the Advisory Committee has requested the Board of Auditors to conduct an audit of the activities of the Procurement Task Force for the period from 1 January 2006 to 30 June 2007, including its compliance with established transparency and accountability measures of the Organization and of OIOS and to report thereon separately to the General Assembly at the main part of its sixty-third session. The Committee was informed by the Chairman of the Board of Auditors that the Board would undertake this special assignment in April 2008.

20. The Advisory Committee points out that, in its report on the activities of the Procurement Task Force for the 18-month period ended 30 June 2007, OIOS refers to the framework of mutual legal assistance in the use of legal powers in a foreign jurisdiction to obtain evidence, and states that "consideration should be given to

whether OIOS on behalf of the United Nations can become a party to mutual legal assistance instruments as it would certainly expedite the investigations" (A/62/272, para. 12). The Committee notes that, in his comments on the report, the Secretary-General, while indicating that OIOS did not formally request that he explore such possibilities, states that such assistance in the use of legal powers in a foreign jurisdiction is generally established through bilateral treaties between States, which call for cooperation between judicial bodies of States parties. In his view, it "therefore appears unlikely that such treaties could be expanded to include cooperation with an international organization in its internal investigations". The Secretary-General also states that he will explore with OIOS the question of what other mechanisms may be available to seek cooperation with Member States at the international level (A/62/272/Add.1, para. 16).

21. **Bearing in mind the very nature of OIOS and its mandate as the internal oversight body within the United Nations Secretariat, the Advisory Committee points out that OIOS cannot become party to international agreements. Moreover, the Committee cautions against any confusion between administrative and judicial investigations.**

22. In paragraphs 58 to 65 of its report (A/62/582, annex) OIOS refers to the approach to the investigation of sexual exploitation and abuse allegations. The Advisory Committee sought clarification regarding paragraph 61, which, as drafted, seems to limit the role of OIOS to investigate sexual exploitation and abuse cases, as mandated by the General Assembly. The Committee was informed by OIOS that the message conveyed in paragraph 61 was not correct. The Committee was assured that OIOS is not seeking to limit its role, but rather to ensure that there are clear roles and responsibilities among all actors. In this connection, the Committee recalls that, in its resolution 61/267 B, the Assembly amended the model memorandum of understanding with troop-contributing countries to give the Government concerned primary responsibility for investigating members of its national contingent. **In clarifying roles and responsibilities, the Committee stresses the need to take account of General Assembly resolution 61/267 B and notes the intention of OIOS to do so (A/62/582, annex, para. 60).**

23. **In the light of the comments and observations made in the paragraphs above, the Advisory Committee is of the opinion that fuller justification is required for the restructuring of the Investigations Division. The Committee trusts that any changes proposed will therefore be supported by a detailed analysis (see para. 16 above). The Committee also recommends that any changes that have administrative and financial implications be subject to the review and approval of the General Assembly in accordance with establishcd procedures.**

Annex I

Office of Internal Oversight Services: Investigations Division and Procurement Task Force

Organizational structure and post distribution for the biennium 2008-2009 (as at 14 February 2008)

Investigations Division
Subprogramme 3

New York

RB:	XB:[a]
1 D-2	1 P-3
1 D-1	2 GS (OL)
2 P-5	
6 P-4	
3 P-3	
2 GS (PL)	
3 GS (OL)	

Vienna

RB:	XB:[b]
1 P-5	1 D-1
2 P-4	1 P-5
3 P-3	3 P-4
4 P-2/1	7 P-3
2 GS (OL)	1 GS (PL)
	4 GS (OL)

Nairobi

RB:	XB:[a]
3 P-4	3 P-4
1 P-3	5 P-3
1 GS (LL)	2 GS (OL)

Resident Investigators

RB:	XB:[c]
	8 P-4
	24 P-3
	8 GS (OL)
	8 GS (LL)

Arusha

RB:	XB:
	1 P-4
	1 P-3

Procurement Task Force[a]

1 D-2
1 P-5
19 P-4
2 P-3
2 P-2
2 GS (OL)

[a] General temporary assistance positions.
[b] General temporary assistance positions except for 1 P-4.
[c] General temporary assistance positions except for 2 P-4, 4 P-3, 1 GS (OL) and 5 GS (LL).

Abbreviations: GS — General Service; LL — Local level; OL — Other level; RB — regular budget; XB — extrabudgetary.

Annex II

Response to queries raised regarding entities other than the Office of Internal Oversight Services that carry out investigations*

1. The Office of Internal Oversight Services (OIOS) generally investigates category I cases on its own initiative or on the request of a head of office, but may refer some of these cases to other entities for action. Category II cases are normally not investigated by OIOS, but by a head of office, the Department of Safety and Security or the Office of Human Resources Management, either at their own initiative or on referral from OIOS.

Heads of office and programme managers

2. Where there is reason to believe that a staff member may have engaged in unsatisfactory conduct in situations that do not appear to pertain to category I, the head of office or responsible officer in that office initiates a preliminary investigation, which will typically be conducted by a panel of investigation appointed by the head of office. Departments do not have standing capacity to perform this function, with the exception of the Department of Safety and Security, which has established an Internal Affairs Unit to investigate allegations against Department of Safety and Security staff. The head of office or responsible officer may also request OIOS or the Department of Safety and Security to conduct the investigation.

Office of Human Resources Management

3. Complaints of sexual harassment are investigated under the authority of the Assistant Secretary-General for Human Resources Management, who will appoint staff members of good standing to establish the facts and report on their findings. There is no standing capacity to perform this function.

Panel on Discrimination and Other Grievances

4. The Panel on Discrimination and Other Grievances, composed of staff members performing the functions of the Panel on a voluntary basis in addition to their regular functions, investigates grievances of staff in connection with their employment, such as allegations of discriminatory treatment. The Panel submits its reports to the Office of Human Resources Management for review and action by the Assistant Secretary-General for Human Resources Management. By its resolution 61/261, the Assembly decided to accept the Redesign Panel's recommendation that the Panel be abolished and its functions redistributed.

Department of Safety and Security

5. The Department of Safety and Security is responsible for the investigation of category II cases that come to its attention directly or are referred to it by heads of office or responsible officers. The Special Investigations Unit of the Department of Safety and Security is a fact-finding unit, the role of which is to gather case facts by

* See paragraph 6 of the main report above.

retrieving information and data from evidence presented. The Special Investigations Unit reports on the facts it has found and issues appropriate recommendations on matters such as reports of loss, damage, theft and other incidents relating to property, altercations between staff members, deaths of staff members, allegations of misconduct, vehicular accidents and forgery.

Peacekeeping missions

6. Conduct and discipline units act as repositories for reported allegations of misconduct at Headquarters and in the field. The conduct and discipline units in missions function as the repository of all complaints of misconduct against all categories of peacekeeping personnel. When misconduct allegations are received, they are recorded by the conduct and discipline units and forwarded to the appropriate investigative body. Category I, or serious, misconduct allegations are forwarded to OIOS for investigation, and category II, or minor, misconduct allegations are forwarded to the Special Investigations Unit for civilian personnel, the office of the Force Provost Marshall for military personnel or an ad hoc panel, usually convened by the head of mission, for investigation as appropriate. For category II allegations, the investigative body to which an allegation is forwarded usually depends on the nature of the allegation and the category of personnel involved in the alleged misconduct. Category I cases that OIOS has referred back to the mission are investigated by the Special Investigations Unit.

7. Boards of inquiry are established at peacekeeping missions to conduct inquiries into serious incidents and accidents that involve death or serious injury of, or involving, mission personnel; major loss or damage involving United Nations personnel and United Nations and contingent-owned property; and serious incidents that may reflect adversely on the mission.

Ethics Office

8. With regard to complaints of retaliation for reporting misconduct or cooperating with a duly authorized audit or investigation, the Ethics Office conducts a preliminary review to determine whether (a) a complainant engaged in a protected activity; and (b) there is a prima facie case that the protected activity was a contributing factor in causing the alleged retaliation or threat of retaliation. If it determines that there is a credible case of retaliation or threat of retaliation, the Ethics Office refers the case to OIOS for investigation.